Supreme Court, U.S.
FILED
AUG 2 - 2004
OFFICE OF THE CLERK

No. 03-814

In The Supreme Court of the United States

WILLARD STEWART,

Petitioner,

v.

DUTRA CONSTRUCTION COMPANY,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

BRIEF FOR THE SIGNAL MUTUAL INDEMNITY ASSOCIATION AS *AMICUS CURIAE* SUPPORTING RESPONDENT

JOHN J. WALSH
Counsel of Record

ZACHARY M. BARTH
FREEHILL, HOGAN & MAHAR LLP
80 Pine Street
New York, NY 10005
(212) 425-1900
(212) 425-1901

THOMAS J. SCHOENBAUM
2000 H Street, NW
Washington, DC 20052
(202) 994-0391
(202) 994-1684

COCKLE LAW BRIEF PRINTING CO (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

To qualify for "seaman" status under the Jones Act, a worker must have an "employment-related connection to a vessel in navigation." *Chandris, Inc. v. Latsis*, 515 U.S. 347, 357 (1995). What is the legal standard for determining whether a special purpose watercraft (such as a dredge) is a Jones Act "vessel?"

TABLE OF CONTENTS

	Page
Question Presented	i
Interest of Signal Mutual Association	1
Summary of Argument	4
Argument	7
I. A Jones Act vessel furnishes food, lodging and care on the voyage	7
A. Only vessels on voyages away from home employed seamen who were entitled to maintenance and cure	7
B. The Jones Act only applied to vessels on voyages away from home	10
C. With the passage of the LHWCA, Congress intended only to exclude those mariners who were entitled to maintenance and cure and wages to the end of the voyage	11
D. The vessel on a voyage away from home was the seaman's home and therefore was a Jones Act vessel	15
II. The term "vessel" should be interpreted in accordance with the ends to be attained by the LHWCA and Jones Act	21
III. The dredge in this case was not a Jones Act vessel	24
Conclusion	26

TABLE OF AUTHORITIES

	Page
FEDERAL CASES	
Aguilar v. Standard Oil, 318 U.S. 724 (1943)	15, 23
Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986)	25
Barnes v. Andover, 900 F.2d 630 (3d Cir. 1990)	5, 8
Bertrand v. International Mooring & Marine, Inc., 700 F.2d 240 (5th Cir. 1983)	2
Bienvenu v. Texaco, Inc., 164 F.3d 901 (5th Cir. 1999)	4
Boudreaux v. American Workover, Inc., 680 F.2d 1034,(5th Cir. 1983)	3
Brown v. Overton, 4 F.Cas. 418 (D.Mass. 1859)	9
Butler v. Whitman, 356 U.S. 271 (1958)	17
Buras v. Commercial Testing and Engineering Co., 736 F.2d 307 (5th Cir. 1984)	2
Calmar S.S. Co. v. Taylor, 303 U.S. 525 (1938)	9, 14, 23
Celotex Corp. v. Catrett, 477 U.S. 317 (1986)	25
Chandris v. Latsis, 515 U.S. 347 (1995)	18
Chelentis v. Luckenbach, 247 U.S. 372 (1918)	21
Cortes v. Baltimore Insular Lines, 287 U.S. 367 (1932)	23
Davis v. Department of Labor and Industries of the State of Washington, 317 U.S. 249 (1942)	4
Desper v. Star Rock Ferry Co., 342 U.S. 187 (1952)	16
DiGiovanni v. Traylor Bros., Inc., 959 F.2d 1119 (1st Cir. 1992)	19, 20
Farrell v. United States, 340 U.S. 511 (1949)	23

TABLE OF AUTHORITIES – Continued

Page

Figueroa v. Campbell Ind., 43 F.3d 311 (9th Cir. 1995) 2, 3

Fontenot v. AWI, Inc., 923 F.2d 1127 (5th Cir. 1991) 4

Gianfala v. Texas Co., 350 U.S. 879 (1955) 17

Great Lakes S.S. Co. v. Geiger, 261 F. 275 (6th Cir. 1919) 8

Grimes v. Raymond Concrete Pile Co., 356 U.S. 252 (1958) 17, 18

Harbor Tug and Barge v. Papai, 520 U.S. 548 (1997) 3, 18

Harden v. Gordon, 11 F.Cas. 480 (C.C.D.Me. 1823) 8

Hatch v. Durocher Dock and Dredge, Inc., 33 F.3d 545 (6th Cir. 1994) 19

International Stevedoring Co. v. Haverty, 272 U.S. 50 (1926) 11, 14, 15

Johnson v. John F. Beasley Constr. Co., 742 F.2d 1054 (7th Cir. 1984) 19

Katriner v. Unisea, Inc., 975 F. 2d 657 (9th Cir. 1992) 20

Knickerbocker Ice Co. v. Stewart, 253 U.S. 149 (1920) 11

McDermott International Co., Inc. v. Wilander, 498 U.S. 337 (1991) 10, 18, 21

Macedo v. F/V Paul and Michelle, 868 F.2d. 519 (1st Cir. 1989) 5

Manuel v. P.A.W. Drilling & Well Service, 135 F.3d 344 (5th Cir. 1998) 20

TABLE OF AUTHORITIES – Continued

Page

Martinez v. Signature Seafoods, 303 F.3d 1132 (9th Cir. 2002) 20

Molzof v. United States, 502 U.S. 301 (1992) 21

Norton v. Warner, 321 U.S. 565 (1944) 16

O'Connell v. Interocean Mgmt. Corp., 90 F.3d 82 (3d Cir. 1996) 5

Peter v. Hess Oil V.I. Corp., 903 F.2d 935 (3d Cir. 1990) 3, 4

Randall v. Chevron, 13 F.3d 888 (5th Cir. 1994) 4

Reed v. Canfield, 1 Sumner 195, 20 F.Cas. 426 (C.C.D. Mass. 1832) 8, 9

Roper v. United States, 368 U.S. 20 (1961) 17

Senko v. LaCrosse Dredging Corp., 352 U.S. 370 (1957) 17

Service Eng. v. Emery, 1997 AMC 395 (9th Cir. 1996) 6

Southwest Marine, Inc. v. Gizoni, 502 U.S. 81 (1991) 3

Southern Pacific Co. v. Jensen, 244 U.S. 205 (1917) .. 11, 22

Southwest Marine v. Gizoni, 502 U.S. 81 (1991) 3, 18

Stewart v. Dutra Const. Co., 343 F.3d 10 (1st Cir. 2003) 20

Swanson v. Marra Bros., Inc., 328 U.S. 1 (1946) 10

The Ben Flint, 3 F.Cas. 183 (D.Wis. 1867) 8, 15

The City of Alexandria, 17 F. 390 (S.D.N.Y. 1883) 9

The Henry B. Fiske, 141 F. 188 (D.Mass. 1905) 15

TABLE OF AUTHORITIES – Continued

Page

The J.F. Card, 43 F. 92 (E.D.Mich. 1890) 8

The Mars, 149 F. 729 (3d Cir. 1907) 9

The Osceola, 189 U.S. 158 (1903) 10, 21, 22

Thibodeaux v. J. Ray McDermott & Co., 276 F.2d 42 (5th Cir. 1960) 19

Tonneson v. Yonkers Contracting Co., 82 F.3d 30 (2d Cir. 1996) 20

Warner v. Goltra, 293 U.S. 155 (1934) 21

Weiss v. Central Railroad Co. of New Jersey, 235 F.2d 309 (2d Cir. 1956) 5, 15, 19

West v. United States, 361 U.S. 118 (1959) 17

Whittington v. Sewer Construction Company, Inc., 541 F.2d 427 (4th Cir. 1976) 19

STATE CASES

Flanagan & Sons, Inc. v. Carken, 11 S.W.2d 392 (Tex. Civ. App. 1928) 11

People v. Island Wide Ins. Brokerage, 177 Misc. 2d 668 (NY Dist. Ct. Nassau County, 1998) 13

U.S. RULES, REGULATIONS AND STATUTES

Fed.R.Civ.P. 56 25

1 U.S.C. §3 ..... 16, 20

Defense Base Act, 42 U.S.C. §1651, et seq. 1

TABLE OF AUTHORITIES – Continued

Page

Longshore and Harbor Workers' Compensation Act (LHWCA):
33 U.S.C. §§901, et seq. 1
33 U.S.C. §902 ..... 4, 10
33 U.S.C. §906(b) 2
33 U.S.C. §908(b) 2
33 U.S.C. §914 5
33 U.S.C. §914(e) 3
33 U.S.C. §914(f) 3
33 U.S.C. §920 ..... 2, 6
33 U.S.C. §932 ..... 1, 6
33 U.S.C. §938 .....

Jones Act
46 U.S.C. §688 10

Non-Appropriated Funds Instrumentalities Act, 5 U.S.C. §8171, et. seq. 1

Outer Continental Shelf Lands Act, 43 U.S.C. §1331, et. seq. 1

Revised Stat Section 3, 1 U.S.C. §3 ..... 11, 21

OTHER AUTHORITIES

Benedict, Eratus C., *The American Admiralty*, §218 at 122 (1850) 7

Benedict on Admiralty §83 at 131 (5th Ed. 1925) 9

Black's Law Dictionary (6th Ed.) 13

1 Force & Norris, *The Law of Seamen* (2003) 14, 23

TABLE OF AUTHORITIES – Continued

Page

Gilmore & Black, *Law of Admiralty* (2d Ed. 1975)..... 3, 10

H.R. No. 1767, 69th Cong. 2d Sess. (1927)..... 12, 13, 14, 22

H.R. No. 9498, 69th Cong., 1st Sess. at 104 13

2 *Larson's Workers' Compensation* (Desk Ed.2003)..... 3

Laws of the Hanse Towns..... 8

Laws of Oleron Art. 7 8

Laws of Wisbuy, Art. 19..... 8

Oleron Sea Code, Laws of Oleron, Art. VI 23

Thomas J. Schoenbaum, *Admiralty and Maritime Law* (4th Ed. 2003)..... 5

S.Rep. No. 92-1125, 92d Congress 2d Sess. (1972)..... 2

INTEREST OF SIGNAL MUTUAL ASSOCIATION[1]

SIGNAL MUTUAL INDEMNITY ASSOCIATION (hereinafter "Signal" or "Association") is a non-profit mutual insurance association authorized under 33 U.S.C. §932(a)(2) to secure its Members' obligations as maritime employers to their maritime employees under the Longshore Harbor Workers' Compensation Act ("LHWCA"), 33 U.S.C. §§901 *et seq.*, and its extensions, the Defense Base Act, 42 U.S.C. §1651 *et. seq.*, the Non-Appropriated Funds Instrumentalities Act, 5 U.S.C. §8171 *et. seq.*, and the Outer Continental Shelf Lands Act, 43 U.S.C. §1331 *et. seq.* The Association comprises about 200 employers including stevedores, marine terminals, oil and gas exploration and drilling companies.

Signal's members need to know prospectively how to compensate an injured worker. Due to the ambiguities in the present system, any of their employees might at any point in time be classified as: (1) harbor workers covered by the LHWCA; (2) as land-based workers covered by state workers' compensation, or (3) as Jones Act seamen who are owed maintenance and cure.[2] An employer is obliged to

---

[1] The parties have consented to the filing of this brief.

Counsel for a party did not author this brief in whole or in part. No person or entity, other than the *Amicus Curiae*, its members, or its counsel made a monetary contribution to the preparation and submission of this brief.

[2] Signal does not cover the employers' obligations under the Jones Act or under any state's workers' compensation statute. Signal will assist its Members to cover their crew risks under Maritime law through insurance provided by other insurance carriers who will sometimes insure these employers with an endorsement to the employer's liability section of a state workers' compensation policy, or as a separate liability policy which is often termed a protection and indemnity (P&I) policy.

pay automatically under each of these regimes. Although they are, theoretically, mutually exclusive,[3] Signal's members are required to insure themselves for each worker under each regime and oftentimes are required to pay under more than one regime, as they can be held liable under two regimes for the same injury at the same time. *See e.g., Figueroa v. Campbell Ind.*, 43 F.3d 311, 316 (9th Cir. 1995) (holding that injured employee was entitled to bring an action for his pain and suffering under the Jones Act, after recovering benefits for his unpaid wages and medical expenses from workers' compensation).

Employees of these Members who suffer injuries can first obtain compensation under the LHWCA.[4] Pursuant to section 20 of the LHWCA (33 U.S.C. §920) they are

[3] *See, e.g., Buras v. Commercial Testing and Engineering Co.*, 1985 AMC 1177, 1179, 736 F.2d 307, 309 (5th Cir. 1984); *Bertrand v. International Mooring & Marine, Inc.*, 1984 AMC 1740, 1742-43, 700 F.2d 240, 243 (5th Cir. 1983).

[4] The LHWCA compensation system is generous and was deliberately made so by the 1972 Amendments which substantially increased the compensation payments in return for the eliding of a longshoreman's rights to sue for unseaworthiness and the employer's freedom from liability on the basis of a warranty of workmanlike performance. *See* S.Rep. No. 92-1125, 92d Congress 2d Sess. (1972) ("The Committee believes that especially with the vast improvement in compensation benefits which the bill would provide, there is no compelling reason to continue to require vessels to assume what amounts to absolute liability for injuries which occur to longshoremen or other workers covered under the Act who are injured while working on those vessels.") The compensation system contemplates payment of two-thirds of the average weekly wage of a harbor worker during temporary total disability. 33 U.S.C. §908(b). This is subject to a cap of approximately $1,000 per week which escalates for cost of living increases. 33 U.S.C. §906(b). Compensation payments are not taxable and therefore the harbor worker often receives amounts for disability that come close to their take-home pay while they work.

presumptively entitled to LHWCA benefits which an employer must pay or otherwise face penalties.[5] Having collected the benefits under the LHWCA, the employee is not precluded from later commencing Jones Act lawsuits to recover wages and pain and suffering. *See Southwest Marine, Inc. v. Gizoni*, 502 U.S. 81 (1991); G. Gilmore & C. Black, *Law of Admiralty* 435 (2d ed. 1975).[6]

Worker's compensation is "part of a *quid pro quo* in which the sacrifices and gains of employees and employers are to some extent put in balance, for, while the employer assumes a new liability without fault, it is relieved of the prospect of large damage verdicts." 2 *Larson's Workers' Compensation* §100.01 at 100-2 (Desk Ed.2003); *see also Peter v. Hess Oil V.I. Corp.*, 903 F.2d 935, 952 (3d Cir. 1990) (noting that permitting tort liability would obstruct "the purposes of LHWCA by depriving maritime employers of their side of LHWCA's *quid pro quo*. . . ."). No such balance is struck when harbor workers are indistinguishable from seamen. When the employee brings a Jones Act lawsuit, he has not elected LHWCA benefits and the jury is entitled to decide whether he is a seaman under the Jones Act. *Southwest Marine*, 502 U.S. at 91. He can then be compensated for lost wages and pain and suffering by a jury in generous amounts. *See e.g., Figueroa*, 43 F.3d at 316; *Boudreaux v. American Workover, Inc.*, 680 F.2d 1034, 1053 (5th Cir. 1983) (making reference to the

[5] *See* 33 U.S.C. §914(e) (10% penalty for installment not paid within 14 days when it is due with award); *Id.* §914(f) (20% penalty for installment not paid within 14 days of when it is due with award).

[6] Further, because the two regimes have separate systems to resolve disputes there is no single forum which can address the question in the alternative. *See Harbor Tug and Barge v. Papai*, 520 U.S. 548 (1997).

"lucrative" Jones Act recovery). The employer who assumed a liability without fault and pays compensation receives no relief from the large verdicts whose avoidance was supposed to be part of the *quid pro quo*. *See Larson*, §100.01 at 100-2; *see also Peter,* 903 F.2d at 952.

SUMMARY OF ARGUMENT

To provide much needed certainty to all participants in the compensation systems, a rule which clearly defines a vessel under both the Jones Act and LHWCA and which can be easily applied is needed.[7] Signal and its Members respectfully urge a rule that removes the ambiguity surrounding the meaning of "master or member of the crew of any vessel," under 33 U.S.C. §902, such that it would be clear who is a seaman and who is a harbor worker which would result in only a single insurance coverage for each employee and payment to the employee under one compensation system.[8]

Congress intended continuity between the benefits received by the worker on the job with the benefits received while disabled. Disabled Jones Act seamen receive

[7] In *Davis v. Department of Labor and Industries of the State of Washington*, 317 U.S. 249 (1942) (Stone, J., dissenting), it was urged that a similar rule designed to avoid the "twilight zone" should be adopted. A solution which allows a "case by case" determination serves no purpose. *See Randall v. Chevron*, 13 F.3d 888 (5th Cir. 1994); *Bienvenu v. Texaco, Inc.*, 164 F.3d 901 (5th Cir. 1999); and *Fontenot v. AWI, Inc.*, 923 F.2d 1127 (5th Cir. 1991) (demonstrating the dangers of complicating analysis of employment classifications on a case by case basis focused on inherently subjective trigger mechanisms).

[8] With one compensation scheme also comes the benefit of one forum for the resolution of disputes related to the compensation.

maintenance and cure,[9] because it is the equivalent of the food, care and lodging received while living aboard the vessel. *O'Connell v. Interocean Mgmt. Corp.*, 90 F.3d 82, 84 (3d Cir. 1996). Thus, a Jones Act vessel should be clearly identified as one which having furnished food, care and lodging to the seaman while working on the vessel, provided maintenance and cure as the equivalent while disabled. *Barnes v. Andover*, 900 F.2d 630, 634-35 (3d Cir. 1990). In other words, the vessel is a "home." *See Weiss v. Central Railroad Co. of New Jersey*, 235 F.2d 309, 314 (2d Cir. 1956) (Lumbard, J., dissenting). This easily distinguishes the Jones Act vessel from the vessel which provides no food, care or lodging and therefore must respond under the LHWCA.

Congress intended such a rule to implement its preference for worker's compensation.[10] The worker's compensation remedy is preferable for a number of reasons. First, LHWCA requires a prompt payment of compensation benefits with significant penalties for failure to make prompt payment. 33 U.S.C. §914. Secondly, the worker's compensation payments under the LHWCA are generous and enable the employee to live comfortably; by contrast, the Jones Act seaman who is not covered by the LHWCA must survive on maintenance and cure which consists of food and lodging expenses only for himself and not his family. *Cf. Macedo v. F/V Paul and Michelle*, 868 F.2d 519 (1st Cir. 1989) (reversing district court increase of

[9] Maintenance is the right of seaman to food and lodging if he falls ill or becomes injured in the service of the ship. Cure is the right to necessary medical services. *See* 1 Thomas J. Schoenbaum, *Admiralty and Maritime Law*, §6-9 at 290 (4th Ed. 2003).

[10] *See* Section II *infra*.

maintenance payments from $10 per day to $40 per day and noting that "[m]aintenance and cure is strictly personal, not family support."); *Service Eng. v. Emery,* 1997 AMC 395, 397-98 (9th Cir. 1996) (commenting on generous federal LHWCA benefits). Thirdly, maritime employees are presumptively covered under the LHWCA under which compensation payments are automatically payable and do not require counsel in order to claim payments. *See* 33 U.S.C. §920. By contrast, a Jones Act lawsuit is ordinarily filed by an attorney, whose compensation is contingency based on usually one-third of the recovery. Fourthly, payments under the LHWCA are financially secure under a mandatory insurance program supervised by the U.S. Department of Labor. 33 U.S.C. §932. No such mandatory insurance exists under the Jones Act leaving employees to the discretion of their employer for insurance coverage and even insured Jones Act employers are vulnerable to the potential of insolvency of their insurers.

Adopting the "vessel as a home" test, which an analysis of legislative history will show to be the test intended by Congress, will result in a more efficient system of maritime workers' compensation with lower insurance premiums, more prompt compensation payments, less attorney and judicial resources and less litigation and transaction costs. It will also ease the fundamental unfairness to workers, employers and insurers posed by the two incompatible compensation systems.

ARGUMENT

I. A JONES ACT VESSEL FURNISHES FOOD, LODGING AND CARE ON THE VOYAGE

Petitioner and supporting *amicus curiae* have argued that the definition of a Jones Act vessel should be as broad as Congress has given the definition of "vessel" for admiralty jurisdiction purposes.[11] This argument fails to ascertain the intent of Congress in enacting both the Jones Act and the LHWCA, which clearly demonstrates that Congress did not intend for every vessel subject to admiralty jurisdiction to be a Jones Act vessel.

A. Only Vessels on Voyages Away from Home Employed Seamen Who Were Entitled to Maintenance and Cure

To understand Congressional intent in enacting the Jones Act, it is necessary to consult the rights of injured seamen before the passage of the Jones Act in 1920. Unlike the treatment of a "vessel" for purposes of admiralty jurisdiction, the 19th Century courts differentiated vessels on the basis of their liability to compensate a seaman for maintenance and cure as opposed to those

---

[11] Historically, the term vessel was given the broadest definition, so as to avoid having admiralty jurisdiction turn on artificial distinctions based on the vessel's size, use, propulsion or lack thereof:

> A scow, a lighter, a ferry-boat, and probably a raft or timber ship, under certain circumstances, would be held to be a ship or vessel, and subject to the same maritime law as other vessels. It is not the form, the construction, the rig, the equipment, or the means of propulsion that establishes the jurisdiction, but the purpose and business of the craft as an instrument of naval transportation.

Erastus C. Benedict, *The American Admiralty*, §218 at 122 (1850).

which had no such liability. Drawing on ancient jurisprudence,[12] the courts charged the ship on a foreign voyage with costs of curing mariners stranded ashore in foreign ports. *See Harden v. Gordon*, 11 F.Cas. 480 (D.Me. 1823). *See also, Barnes*, 900 F.2d at 637 (noting that the adjectives "friendless" and "helpless" as used by the *Harden* court were generally used to describe sailors in foreign ports). It was soon recognized that the voyage need not be foreign; the maintenance and cure obligation attached to vessels employed on voyages in "navigable fresh waters." *The Ben Flint*, 3 F.Cas. 183 (D.Wis. 1867). However the voyage had to take the mariner away from home to trigger the requirement of maintenance and cure: "the same consideration under the rule may not be extended indiscriminately to all classes of seamen . . . the same liberality need not be extended to a seaman shipping for a voyage for a few days on the lakes. . . ." *Id.* If the crewmember was close to home where he could obtain medical treatment, then he was denied cure at the expense of the ship. *The J.F. Card*, 43 F. 92 (E.D. Mich. 1890).

A voyage away from home was the basis for a maintenance and cure award. *See Reed v. Canfield*, 1 Sumner 195, 202, 20 F.Cas. 426 (C.C.D. Mass. 1832).[13] The voyage

[12] By general maritime law, if a seaman fell sick during the voyage, he was to be cured at the expense of the vessel. *See* Laws of Oleron Art. 7; Laws of Wisbuy, Art. 19; Laws of the Hanse Towns, Art. 45, *see also Harden v. Gordon*, 11 F.Cas. 480 (1823).

[13] The connection between maintenance and cure and a voyage was premised on the crewmember having a stake in the voyage:

> But the truth is that the maritime law furnishes entirely different doctrines upon this, as well as many other subjects from the common law. Seamen are in some sort co-adventurers upon the voyage, and lose their wages upon casualties which do not affect artisans at home. They share

(Continued on following page)

requirement also triggered the vessel's liability for wages: if a seaman fell ill or injured on the voyage and had to be discharged before the voyage was completed, the wages were paid to the end of the voyage but not beyond the voyage, at least where the ship was faultless. *See Great Lakes S.S. Co. v. Geiger*, 261 F. 275, 277-78 (6th Cir. 1919). Nor was maintenance and cure originally paid beyond the voyage. *See Calmar S.S. Corp. v. Taylor*, 303 U.S. 525, 527 (1938). The courts struggled with whether liability for maintenance and cure extended beyond the voyage, with the lower courts at the turn of the 20th Century leaning in favor of extending cure and attendant lodging for sick seamen beyond the voyage. *See id; The Mars*, 149 F. 729 (3d Cir. 1907); *Benedict on Admiralty*, §83 at 131 (5th Ed. 1925).[14] However, the ultimate extension of seamen's rights to maintenance and cure beyond the voyage did not imply or forecast the extension of the class of maritime workers who were entitled to maintenance and cure.[15]

> the fate of the ship in cases of ship-wreck and capture. The policy of the maritime law, for great and wise and benevolent purposes, has built up peculiar rights, privileges, duties and liabilities in the sea service which do not belong to home pursuits.

The City of Alexandria, 17 F. 390, 395-96 (S.D.N.Y. 1883) (quoting *Reed v. Canfield*, 1 Sumner 195, 20 F.Cas. 426 (C.C.D. Mass. 1832)).

[14] The courts were not in unison in extending maintenance and cure beyond the voyage. Many courts allowed maintenance and cure beyond the voyage in situations where the treatment had already begun and was to continue past the time of the voyage and to other situations where the ship failed to provide competent maintenance and cure. *See The City of Alexandria*, 17 F. 390 (S.D.N.Y. 1883); *Brown v. Overton*, 4 F.Cas. 418 (D. Mass. 1859).

[15] *See Calmar S.S. Co. v. Taylor*, 303 U.S. 525 (1938) and note 20 *infra*.

B. The Jones Act only Applied to Vessels on Voyages Away from Home

The *Osceola*, 189 U.S. 175 (1903) linked maintenance to the voyage away from home by confirming that maintenance was payable "at least so long as the voyage is continued," but denied seamen a negligence remedy.[16] Congress enacted the Jones Act in 1920 which established a negligence remedy for *The Osceola* seamen. 46 U.S.C. §688 *et. seq*. While the Jones Act contained no reference to a "vessel," Jones Act seamen were later defined to be the masters or members of a crew of any vessel within the meaning of LHWCA. 33 U.S.C. §902; *see also Swanson v. Marra Bros., Inc.*, 328 U.S. 1 (1946). Jones Act vessels were those whose seamen were entitled to maintenance and cure and wages to the end of the voyage, as the only purpose of the Jones Act was "to remove the bar created by *The Osceola*, so that seamen would have the same rights to recover for negligence as other tort victims." Gilmore & Black, *Law of Admiralty*, §328-329 (2d Ed. 1975), quoted in *McDermott International v. Wilander*, 498 U.S. 337, 342 (1991). Thus, Jones Act seamen are *Osceola* seamen working on vessels that embarked on voyages away from home. There is no evidence of a Congressional attempt to embrace within the Jones Act all workers who worked on "every description of watercraft or other artificial contrivance used, or capable of

[16] In *The Osceola*, 189 U.S. 175 (1903), the court codified the ill and injured seaman's rights into four propositions: (1) the sick or injured seaman was entitled to maintenance and cure "at least so long as the voyage is continued"; (2) the seaman may recover indemnity for injuries sustained as a result of unseaworthiness; (3) the seaman cannot recover from the owner for injuries sustained through the negligence of fellow servants; (4) the seaman is not allowed to recover for the negligence of the master or member of the crew beyond maintenance and cure. *Id*. at 175.

being used, as a means of transportation on water." 1 U.S.C. §3.

This easy classification of Jones Act vessels and seamen would have been more easily discerned were it not for the Court's humane decision in *International Stevedoring Co. v. Haverty*, which gave maritime workers who lacked any compensation remedy under state or federal law[17] a Jones Act remedy, despite their work on vessels which did not embark on voyages and which did not provide food, care or lodging. 272 U.S. 50 (1926). *Haverty* created a new class of Jones Act seamen. *Id*. One court held that this new class of "seaman" was not entitled to maintenance and cure. *See Flanagan & Sons, Inc. v. Carken*, 11 S.W.2d 392 (Tex. Civ. App. 1928). But the issue was never seriously litigated, as Congress overruled *Haverty* in enacting the LHWCA in 1927.

C. With The Passage Of The LHWCA, Congress Intended Only To Exclude Those Mariners Who Were Entitled To Maintenance And Cure And Wages To The End Of The Voyage

All seamen were initially included in the House Bill and to avoid the exclusion of any inland vessel workers,

[17] As to the workers who were maritime employees but outside of the Jones Act, this Court held unconstitutional an attempt to apply state worker's compensation to any worker whose injury occurred seaward of the gangplank. *See Southern Pacific Co. v. Jensen*, 244 U.S. 205 (1917). Congressional attempts to apply state law to injuries seaward of the gangplank were similarly rebuffed in *Knickerbocker Ice Co. v. Stewart*, 253 U.S. 149 (1920).

the House created a laundry list of watercraft that were subject to the LHWCA:

> This Act shall apply to any maritime employment performed –
>
> * * *
>
> (B) As master or member of a crew of a barge, lighter, tug, dredge, vessel, or other ocean, lake, river, canal, harbor or floating craft owned by a citizen of the United States.[18]

At the same time, Congress reserved to "the masters or members of the crew" maintenance and cure and their "wages to the end of the voyage." H.R. Report No. 1767, 69th Cong. 2d Sess. at 20 (1927). The legislative history makes it clear that Congress connected the "vessels" to a voyage:

> The bill has been amended so as to provide the benefits of compensation to seamen, or, to use the language of the bill, 'to masters and members of the crew.' As to this class of workers, the bill provides that they are to receive compensation, in addition to their right to maintenance and cure, and wages to the end of the voyage as now provided by maritime law.[19]

This class of workers referred to the Jones Act seamen who had previously received maintenance and cure and wages to the end of the voyage.[20] Congress intended to

[18] H.R. No. 1767, 69th Cong. 2d Sess. at 2 (1927)

[19] H.R. Report No. 1767, 69th Cong. 2d Sess. at 20 (1927).

[20] Those rights were not extended to the laundry list of vessels whose workers were to be conferred rights under the LHWCA, namely, the crew of the barges, lighters, tugs, dredges or other ocean, lake,

(Continued on following page)

overrule the Jones Act but to preserve those two unique rights peculiar to seafarers who embarked on voyages away from home. This narrow class, the Jones Act seamen, but none other, was, for the reasons stated below, excised from the LHWCA.

The International Seaman's Union protested the inclusion in the LHWCA of the Jones Act seaman.[21] In response, Congress exempted "master or member of a crew on any vessel" from the LHWCA. The exemption did not include the laundry list of floating craft that had previously been included in the LHWCA and it is clear that, in amending the bill, Congress excised only the class of seamen who were entitled to maintenance and cure and wages to the end of the voyage.[22]

river, canal, harbor or floating craft who were also to be included in the LHWCA. *See* H.R. No. 1767.

[21] Testimony before the House Judiciary Committee by Andrew Furuseth, President of the International Seaman's Union of America, outlined the difference between Jones Act seamen and harbor workers:

> When a man is working in a harbor or on shore, and he, using his eyes and his understanding can see that there is grave danger of him being seriously hurt or maimed or killed, there is nothing to hinder that man from taking off his overalls, putting on his coat and saying, 'no, I will not do that work.' He can do that, and go away and nobody can say anything to him.
>
> But where a vessel is at sea the seaman must obey orders, he has got no choice. He is in the same position as the soldier in the front line of a battle. He is there to obey such orders as are given to him by his superior officers, regardless of whether he is risking his life in so doing or not.

H.R. No. 9498, 69th Cong., 1st Sess. at 104.

[22] This implicates the statutory construction rule "inclusio unius est expresio alterius." *See People v. Island Wide Ins. Brokerage*, 177 Misc. 2d 668, 670 (NY Dist. Ct. Nassau County, 1998) (citing Black'

(Continued on following page)

There is no evidence to suggest that Congress implicitly amended the Jones Act by excluding from the LHWCA (and therefore adding to the Jones Act), seamen who worked on those vessels that did not embark on voyages away from home and who therefore were not eligible for maintenance and cure. Nor is there a scintilla of evidence that Congress engaged in only a partial overrule of *Haverty* by confirming that Court's creation of a new class of Jones Act seamen who were not lodged, fed or cared for by the vessel. In short, a Jones Act seaman returned to what he was before *Haverty*, namely, one entitled to maintenance and cure and wages to the end of the voyage.[23] As a result, the *Haverty* seamen became covered by the LHWCA, not the Jones Act.[24]

Law Dictionary, 6th Ed.). The House Bill reported that the LHWCA would cover a "barge, lighter, tug, *dredge*, vessel or other ocean, lake, river, canal, harbor or floating craft. . . ." H.R. No. 1767, 69th Cong. 2d Sess. at 2 (1927) (emphasis added). Congress deleted "a master or member of a crew of any vessel" from coverage. By listing only the term "vessel" in its exclusion, it is fair to infer that the other "floating craft" were to maintain LHWCA coverage.

[23] The "voyage" continued to play a major role in Jones Act jurisprudence as in 1937, the Court in *Calmar S.S. Co. v. Taylor*, 303 U.S. 525 (1938), laid to rest the issue at the turn of the 20th Century concerning the length of payment of maintenance and cure and extended maintenance and cure for the sick or injured seaman past the end of the voyage, until the point of maximum cure. Clearly, the rights to maintenance and cure continued to be connected to a vessel on a voyage.

[24] Congress intended the LHWCA to cover all those maritime workers who could not be covered by state laws. *See* 1 Force & Norris, *The Law of Seamen*, §2:6 at 2-23 (2003).

D. The Vessel On A Voyage Away From Home Was The Seaman's Home And Therefore Was A Jones Act Vessel

The vessel on a voyage away from home provided food, care and lodging to the seaman which was to continue during the seaman's disability. *See The Henry B. Fiske*, 141 F. 188 (D. Mass. 1905) (holding that a seaman is to receive the same value of room and board that he was receiving while he was on the ship). As it was before *Haverty*, the Jones Act vessel was a "home" or a "place to live" for the seaman as set forth in Judge Lumbard's dissenting opinion in *Weiss v. Central Railroad Co. of New Jersey:*

> The most important single factor which has justified the creation of the remedy for seamen and for no one else is, I think, the peculiar relation of the seaman to his ship. The typical seaman looks to his ship, not only as the place where he works, but as a home. It is his 'framework of existence.' *Aguilar v. Standard Oil Co., supra*, 318 U.S. at 732. Thus, when sickness makes it impossible for him to work on the ship, he is deprived of a place to live as well as a place to work. Under these circumstances, it was appropriate to require the shipowner to provide him with a means of maintaining himself during his illness.

235 F.2d 309, 314 (2d Cir. 1956) (Lumbard, J., dissenting).[25]

---

[25] The *Weiss* majority found that the "vessel" was engaged on a "voyage" by making short trips in the harbor. 235 F.2d at 313. Such a holding unnecessarily dilutes the meaning of a "voyage" for maintenance and cure purposes. *See The Ben Flint, supra*.

The Court's previous decisions are not inconsistent with a "vessel as a home" test under the Jones Act. In *Norton v. Warner*, the employee worked on a barge that had no motive power of its own, but the barge provided him with quarters. 321 U.S. 565 (1944). He bought his own meals and lived, ate and slept on the barge. And he was continuously aboard. 321 U.S. at 567. The court reversed the Deputy Commissioner's finding that he was entitled to compensation under the LHWCA, and found that he was "a master or member of a crew of any vessel." Dictum in the case might suggest a broader meaning to the word "vessel,"[26] but the Court did not have to address the limits of the meaning of a vessel under the Jones Act. Accordingly, *Norton* cannot be seen to be controlling authority for broadening the meaning of the word "vessel" in the LHWCA beyond a vessel which provides the seaman with a home or a place to live.

In several cases in the late fifties, the issue of Jones Act vessel status arose but these decisions provided no clear authority on the contours of a Jones Act vessel.[27] For

[26] "A barge is a vessel within the meaning of the act even when it has no motive power of its own, since it is a means of transportation on water." *Id.* at 571 (citations omitted).The court did refer to Revised Stat Section 3, 1 U.S.C. §3 which defines a vessel as "every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water." *Id.* at 571 n.4.

[27] Other cases have addressed the issue of whether the vessel was "in navigation." However, these cases are not apposite here, because the question is not whether there was anything in navigation but whether there was a "vessel" as Congress intended the meaning in determining whether the LHWCA benefits or Jones Act rights would apply. *See Desper v. Star Rock Ferry Co.*, 342 U.S. 187, 188 (1952) (an employee who was cleaning, painting and waterproofing boats which had been beached for the winter was not a seaman under the Jones Act, as he was not doing seaman's work but work which "customarily (would) be

(Continued on following page)

instance, in *Senko v. LaCrosse Dredging*, an employee aboard a dredge was held to be a Jones Act seaman but the court specifically excluded from consideration whether the dredge was a "vessel." *See* 352 U.S. 370, 371 n.1 (1957) ("no question has been raised at any time as to whether the dredge involved here had the status of a 'vessel' at the time of Petitioner's injury"). Nor did the Court reach the issue in *Gianfala v. Texas Co.*, despite holding that an employee who played a part in the operation of moving a barge was entitled to have the jury decide whether he was a Jones Act seaman. 350 U.S. 879 (1955) (per curiam).

The issue of what was a Jones Act vessel was discussed only in the dissent in *Grimes v. Raymond Concrete Pile Co.*, which was a short, per curiam decision reversing the First Circuit which had held that a pile driver, who worked on a fixed tower and who sustained injuries while being transferred at sea in a "Navy life ring" from a tug to the Texas Tower was not a seaman. 356 U.S. 252 (1958). The case, however, does not answer the question posed by Justice Harlan in his dissent, "[p]resumably the court does not consider as a vessel this man-made island, the Texas Tower, which was securely fixed to the ocean bed before petitioner was injured."[28]

done by exclusively shore-based personnel"); *West v. United States*, 361 U.S. 118 (1959) and *Roper v. United States*, 368 U.S. 20 (1961) (ships that had been laid up in the "mothball fleet" were withdrawn from navigation, so as not to be vessels in navigation for purposes of the Jones Act); *Butler v. Whitman*, 356 U.S. 271 (1958) (the tug or barge from which the employee fell and drowned were not in navigation).

[28] *Id.* at 255 (Harlan, J. dissenting).

Nonetheless, if the Texas Tower in *Grimes* was a "vessel" under the Jones Act and LHWCA, such an interpretation is not inconsistent with a "vessel as a home" test, since it provided food and lodging to the crew.[29]

More recent decisions which concerned the necessary connection of the seaman to the vessel are not dispositive and do not address whether a Jones Act vessel is limited to a certain class. In *Southwest Marine v. Gizoni*, the issue was not whether the moving platform was a Jones Act vessel but merely whether the employee working a listed occupation under the LHWCA was precluded from being a Jones Act seamen. 502 U.S. 81, 92 (1991). ("Because a ship repairman may spend all of his working hours aboard a vessel in furtherance of its mission – even one used exclusively in ship repair work – that worker may qualify as a Jones Act seaman.")

Similarly, in *McDermott International v. Wilander*, 498 U.S. 337 (1991); *Chandris v. Latsis*, 515 U.S. 347 (1995), and *Harbor Tug and Barge Co. v. Papai*, 520 U.S. 548 (1997), the ships on which the employees worked did provide food, lodging and care to the employees, but the question was whether the employees had the requisite connection to the vessel to qualify as Jones Act seamen. *Wilander*, 498 U.S. at 364. ("[I]t is not the employee's particular job that is determinative, but the employee's connection to a vessel.") Thus, none of the Court's prior

[29] In *Grimes* the court noted "when the tower was towed to sea, petitioner with about 25 other workmen lived on the tower and kept it in condition by operating air compressors, generators, and pumps to expedite installation at the permanent site, as well as by performing certain functions to keep it in safe tow." 356 U.S. at 254.

cases preclude the adoption of the "vessel as a home" test for Jones Act vessels.

Except for the Second Circuit's decision rejecting the "vessel as a home" definition in *Weiss*,[30] no circuit court has attempted to explore the connection between the definition of "vessel" and legislative history in distinguishing the Jones Act from the LHWCA. Several tests have evolved for defining a "vessel" under the Jones Act, some of which attempt to distinguish vessels which are or are not covered by the Jones Act on the basis that certain vessels present risks peculiar to seamen which Congress intended to be covered by the Jones Act. It is submitted that such tests have no grounding in legislative history and are impractical to administer. The First Circuit in this case and in *DiGiovanni v. Traylor Bros., Inc,* 959 F.2d 1119 (1st Cir. 1992) (*en banc*) held that a Jones Act vessel must be primarily used in transportation of cargo or passengers, and if not, then it must be actually navigating at the time of injury. The Sixth Circuit in *Hatch v. Durocher Dock and Dredge, Inc.*, 33 F.3d 545 (6th Cir. 1994), and the Seventh Circuit in *Johnson v. John F. Beasley Constr. Co.*, 742 F.2d 1054 (7th Cir. 1984), follow this approach.

[30] One court has defined the claimant's connection to a vessel in terms that would support a "vessel as a home" test. For example, in rejecting the application of admiralty jurisdiction for an injured employee working on a barge, the concept of a permanent attachment to a vessel or fleet of vessels was discussed in *Whittington v. Sewer Construction Company, Inc.*, 541 F.2d 427 (4th Cir. 1976), where the court noted that the claimant neither "took his meals or slept on any of the barges or towing vessels." *Id.* at 436. This language presents a clear parallel to the *Weiss* "vessel as a home" test. *See also Thibodeaux v. J. Ray McDermott & Co.*, 276 F.2d 42 (5th Cir. 1960) (refusing to find Jones Act status as the injured maritime employee "was a regular shore worker. He lived, ate and slept at home.")

The Fifth Circuit requires that the vessel must have been built with the intent of performing a transportation function and transportation had to be an important part of the vessel's business at the time of the accident. *See Manuel v. P.A.W. Drilling & Well Service*, 135 F.3d 344 (5th Cir. 1998). The Second Circuit approved part of the Fifth Circuit's test but rejected the need for the vessel to be built for transportation purposes and focused instead on its present use as a means of transportation or a work platform. *See Tonneson v. Yonkers Contracting Co.*, 82 F.3d 30 (2d Cir. 1996).

Finally, the Ninth Circuit defines a Jones Act vessel as to what it was not. *See Martinez v. Signature Seafoods*, 303 F. 3d 1132, 1135 (9th Cir. 2002) (*quoting Katriner v. Unisea, Inc.*, 975 F. 2d 657, 660 (9th Cir. 1992)). A vessel is not a Jones Act vessel if it is "'incapable of independent movement over water, [is] permanently moored to land, ha[s] no transportation function of any kind, and ha[s] no ability to navigate.'"

Missing from these cases is discussion on the legislative history as to the meaning of "vessel" under the LHWCA which, in turn, defines a Jones Act vessel. It is submitted that the link between the meaning of "vessel" and the differences between the Jones Act and the LHWCA must be explored.

II. THE TERM "VESSEL" SHOULD BE INTERPRETED IN ACCORDANCE WITH THE ENDS TO BE ATTAINED BY THE LHWCA AND JONES ACT

No "transportation function" reference can be found in the legislative history of the Jones Act or the LHWCA in reference to vessels. Further, nothing in the legislative history of the LHWCA or the Jones Act supports the proposition that Congress intended the word "vessel" to have the broad, jurisdictional meaning in the Rules of Construction Act. 1 U.S.C. §3.

Arguing essentially that the term "vessel" in the LHWCA carries old statutory baggage, Petitioner and *amici* have pointed to a "cardinal rule of statutory construction" that where Congress borrows terms of art which have accumulated in the legal tradition in meaning of centuries of practice, it adopts the cluster of ideas that were attached to the borrowed word in the body of learning from which is was taken and the meaning its use will convey to the judicial mind unless otherwise instructed. Petitioner's Brief at 13 (quoting *Molzof v. United States*, 502 U.S. 301, 307 (1992)); *see also Wilander,* 498 U.S. at 342. However, this cardinal rule must yield to anther tenet of statutory construction. Statutory language "must be read in light of the mischief to be corrected and the end to be attained." *Wilander*, 498 U.S. at 349 (*quoting Warner v. Goltra*, 293 U.S. 155, 158 (1934)).

Both the LHWCA and the Jones Act were statutes meant to provide relief to different sets of maritime workers. In the case of *Osceola* seamen, attempts to confer a negligence remedy had been thwarted, *see Chelentis v. Luckenbach S.S. Co.,* 247 U.S. 372 (1918), and had finally succeeded with the Jones Act. In the case of maritime

workers who were not *Osceola* seamen, Congress searched for a valid compensation remedy when state laws could not be constitutionally applied to these workers. *See Southern Pacific,* 244 U.S. at 215.

In enacting the LHWCA, Congress demonstrated a clear preference for compensation benefits over common law suits:

> Workmen's compensation has come to be universally recognized as a necessity in the interest of social justice between employer and employee. It is the modern substitute for the old common-law remedy afforded through actions at law for damages, and promptly affords relief to the injured employee by furnishing medical attendance and supplies immediately upon the occurrence of the injury or as soon thereafter as possible and compensation during the period of his illness or inability to pursue his usual employment, and in case of death, financial assistance to his dependents, without the delay and expense which an action at law entails.

H.R. Report No. 1767 *supra*. at 20.

Congressional preference for the worker's compensation remedy must be read with a practical examination of the differences between a Jones Act seaman and a harbor worker, in order to devise a valid test for what is a vessel under both the Jones Act and the LHWCA. There are distinct differences between the two. These differences assist in articulating a bright line test.

A defining feature of a Jones Act seaman is that he or she receives food, lodging and medical care aboard the vessel and is entitled to a continuance of that maintenance and care, when he is separated from the ship due to

disability as a result of illness or injury in the service of the ship. *Calmar S.S. Co. v. Taylor*, 303 U.S. 525 (1938); *Cortes v. Baltimore Insular Lines*, 287 U.S. 367 (1932). It is not an award of compensation for damages for the disability a seaman suffers. *See Calmar,* 303 U.S. at 528. When a Jones Act seaman is taken ill or injured on a ship, the shipowner must provide for the equivalent food, lodging and care that is comparable to what the seaman received aboard the ship. *Id*. This doctrine of maintenance and cure is steeped in ancient jurisprudence going back to the Code of Oleron. *See Oleron Sea Code*, Laws of Oleron, Art. VI (quoted in 1 *Benedict on Admiralty*, 1-22 (7th Ed. 1974)). It cannot be contracted away. *See Harden v. Gordon*, 11 F. Cas. 480 (C.C.D.Me. 1823) (Story, J.); *Barnes*, 900 F.2d at 637.

The maintenance and cure obligation exceeds the scope of LHWCA compensation. Unlike a land worker who must show disability "arising out of employment," to receive maintenance and cure, the Jones Act seaman need not prove any causation between the injury/illness and his employment. *See Force & Norris, supra*, §26:2 at 26-5. The illness or injury need only manifest itself "in the service of the ship and therefore is often sustained or contracted before the seaman joins the ship." *Id.* Unlike the harbor worker who must prove a work related injury, the seaman need not be at work aboard the vessel to claim maintenance and cure for any injury or illness he suffers. *See Aguilar v. Standard Oil*, 318 U.S. 724 (1943), (holding injury on shore leave qualifies for maintenance and cure). So long as the seaman is answerable to the call of the ship at the time disability occurs, he is entitled to maintenance. *See Farrell v. United States*, 340 U.S. 511 (1949).

The continuity of the benefits paid to the seaman in disability is the key to the definition of a Jones Act vessel.

The Jones Act obligation follows the maintenance and cure obligation, which is the extension during disability of benefits the seafarer received while working on the ship. If he received food, care and lodging while working, he should receive it in disability.

It is awkward and unnecessary to extend those benefits during the disability of maritime workers who receive no such food, lodging or medical care aboard the vessel but who are eligible for compensation under the LHWCA. On the other side of that coin, it would be harsh to deny immediate LHWCA compensation benefits to a maritime worker on a vessel that does not provide food, lodging or care and to force the worker to accept maintenance and cure on the basis that he worked on a vessel broadly defined to be a Jones Act vessel by a standard wholly unconnected to the legislative history of the Jones Act and LHWCA. Nor can any Congressional intent be discerned that the definition of a vessel be sufficiently ambiguous to allow the worker to pursue both remedies, which is the state of the law today.

III. THE DREDGE IN THIS CASE WAS NOT A JONES ACT VESSEL

One of the advantages of the "vessel as a home" test for Jones Act vessels is the ease and clarity of its application in court in Jones Act cases and by Administrative Law Judges in LHWCA cases. The bright line drawn by the Court with the "vessel as a home" test will rarely result in factual issues necessitating a jury decision on whether the seaman worked on a Jones Act vessel. If the vessel provided food, care and lodging to the seaman, it is a Jones Act vessel.

Summary judgment was appropriate here. The SUPER SCOOP was not Petitioner's home but it was his workplace. J.A. 45. The Petitioner did not sleep on the SUPER SCOOP. J.A. 17, 45. He did not receive any medical care aboard the dredge and, although there were dining facilities, there is no record of a cook or anyone to provide Petitioner with meals aboard the dredge. *Id.* Accordingly, Petitioner received no food, care or lodging aboard the dredge and it would be awkward and unnecessary to provide him with the maintenance and cure, when he did not receive such maintenance, care or cure when he worked aboard the vessel.

Here, there are no such facts that could place the SUPER SCOOP into a category of a home, where the seaman is fed, lodged or cared for. Because the Petitioner did not sleep aboard the vessel or was not cared for by the vessel the Petitioner is similar to a land-based worker. J.A. 17, 45. There is no jury issue to determine if the vessel provided him with food care or lodging. The vessel was his workplace and he was entitled to LHWCA compensation. Consequently, no genuine issue of material fact as to whether the SUPER SCOOP is a Jones Act vessel under the meaning of the Jones Act and LHWCA arose and therefore the District Court was correct in rendering summary judgment. *See* Fed.R.Civ.P. 56; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

CONCLUSION

WHEREFORE, Signal respectfully joins the Respondent in asking that this Court affirm the decision below and for identifying that in order for a watercraft to be a Jones Act vessel, the watercraft must act as the injured seaman's home in providing food, care and lodging.

Respectfully submitted,

JOHN J. WALSH
Counsel of Record

ZACHARY M. BARTH
FREEHILL, HOGAN & MAHAR LLP
80 Pine Street
New York, NY 10005
(212) 425-1900
(212) 425-1901

THOMAS J. SCHOENBAUM
2000 H Street, NW
Washington, DC 20052
(202) 994-0391
(202) 994-1684

41

1411